IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1070

GUIDO TRUCCO,

Petitioner,

vs.

ERIE RAILROAD COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA (WESTERN DISTRICT) AND BRIEF IN SUPPORT THEREOF.

EDWARD E. PETRILLO,
Counsel for Petitioner.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Guido Trucco, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, Western District, entered in this case, January 7, 1946.

Statement of Jurisdiction

The Jurisdiction of this Court is invoked under Sections 237 (b) and 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, also Act of March 8, 1934, and revised rules of the Supreme Court of the United States adopted February 13, 1939, and amended March 25, 1940,

October 21, 1940, and May 26, 1941. This petition is filed within three months from the date of the judgment in accordance with the rules.

Statement of Matter Involved

The judgment of the Supreme Court of Pennsylvania sought to be reviewed affirmed the judgment of the Superior Court of the State of Pennsylvania, which held that the petitioner's only remedy in his case was under the Act of Congress known as the Federal Employers' Liability Act and not under the provisions of the Workmen's Compensation Act of the State of Pennsylvania.

Appellant was injured on the 15th day of September, 1941, when he twisted his foot on some scrap iron while performing the duties of a blacksmith's helper in a repair shop of the Erie Railroad Company located at Meadville, Pennsylvania. After a period of hospitalization he was found to be totally disabled by reason of such injury and at the present time is still totally disabled from performing any heavy work.

He filed a petition for compensation with the Workmen's Compensation Board, and the Referee, after hearing, allowed him compensation for total disability. In his findings of fact and conclusions of law the Referee also found that claimant was not engaged in Interstate Commerce at the time of said injury. The defendant company, appellee, took an appeal to the Workmen's Compensation Board, which also found that the petitioner was not engaged in interstate commerce at the time of his injury and affirmed the award of the Referee. A further appeal was then taken by the defendant company to the Court of Common Pleas of Crawford County, which reversed the findings of the Workmen's Compensation Board. The Superior Court and Supreme Court have sustained such conclusions.

Opinions Below

The decision of the Supreme Court of Pennsylvania, now sought to be reviewed is as follows:

Filed Jan. 7, 1946.

"Per CURIAM:

We have carefully considered the record in this case in the light of the argument made on behalf of appellant, but must agree with the Superior Court that the Amendment of August 11, 1939, c. 685 § 1, 53 Stat. 1404, 45 U. S. C. A. § 51, to the Federal Employer's Liability Act, is controlling and that the Pennsylvania Workmen's Compensation Act is inapplicable.

The judgment is affirmed for the reasons stated by the Superior Court in its opinion reported in 157 Pa. Superior Ct. 398, 43 A. 2d 626."

The Opinion of the Superior Court of Pennsylvania referred to in the Opinion of the Supreme Court of Pennsylvania is as follows:

"Opinion by RHODES, *J.*:

Claimant, on September 15, 1941, was employed by defendant at its blacksmith shop at Meadville, Pa. In this shop repair parts for defendant's locomotives were made. This was the principal type of work in that shop. Claimant was hired as a helper to one of the blacksmiths to assist in the making of such parts, and at the time of the alleged accident he was engaged in making "strap hangers" used as replacement parts for defendant's locomotives. Defendant is an interstate railroad, and its locomotives are necessarily used in the conduct of interstate commerce. Claimant had been similarly employed by defendant prior to 1935, and was reemployed on the day of the accident.

The referee found that claimant was totally disabled as a result of an accidental injury on September 15, 1941, while in the course of his employment with defend-

ant, and that he was engaged in intrastate commerce at the time of his accident. The Workmen's Compensation Board sustained the findings of fact, conclusions of law, and the award of the Referee. On appeal to the court of common pleas the award was reversed and judgment entered for defendant on the ground that claimant's remedy, if any, was under the Federal Employers' Liability Act, as amended by the Act of August 11, 1939, c. 685, § 1, 53. Stat. 1404, 45 U. S. C. A. § 51 et seq."

There is no dispute as to the nature of claimant's employment, and consequently the only question presented is whether claimant was engaged in interstate commerce as defined by the 1939 amendment; the question for decision is therefore one of law. *Scarborough* v. *Pennsylvania R. Co.*, 154 Pa. Superior Ct. 129, 130, 35 A. 2d 603 (accident subsequent to amendment of 1939); *Jordan* v. *Erie R. Co.*, 146 Pa. Superior Ct. 134, 136, 22 A. 2d 116 (accident prior to amendment of 1939). The amendment of 1939 reads as follows: "Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter." In *Scarborough* v. *Pennsylvania R. Co., supra,* 154 Pa. Superior Court 129, 35 A. 2d 603, this court had occasion to give consideration to the purpose and scope of the amendment. In that case we said that under the 1939 amendment it was no longer necessary that an employee to receive the benefits of the Federal Act be engaged at the time of his injury in interstate transportation or in work so closely related to it as to be practically part of it, and that the amendment covered an employee when any part of his

duties was in furtherance of interstate commerce. We held that claimant, whose regular and general employment was that of a signalman working on the main line of defendant's interstate railroad, although at the time of the accident he was employed in installing new lights on the platform roof of one of defendant's stations, was engaged in interstate commerce under the amendment of 1939.

Speaking of the purpose of the amendment of 1939, it was said in *Ermin* v. *Pennsylvania R. Co.*, 36 F. Supp. 939, at page 940: "There are multitudinous decisions raising hair-splitting interpretations as to whether or not the employee at the time of his accident was actually engaged in interstate commerce. It was to avoid this difficulty that Congress enacted the amendment."

In the present case we think it clear that claimant was engaged in the furtherance of interstate commerce or in work affecting such commerce directly or closely and substantially. Claimant was engaged in the production of essential parts for the repair and maintenance of defendant's locomotives which were part of its facilities as a railroad operating an interstate commerce. An employee engaged in the repair or maintenance of interstate railroad facilities is within the present act. *Southern Pacific Co.* v. *Industrial Accident Commission et al.*, 120 P. 2d 880, 885; *Overstreet et al.* v. *North Shore Corp.*, 318 U. S. 125, 132, 63 S. Ct. 494, 87 L. Ed. 656, 663; *Moser* v. *Union Pacific R. Co.*, 147 P. 2d 336, 339.

In our opinion, this case comes within the exclusive operation of the Federal Employers' Liability Act, as amended. *Scarborough* v. *Pennsylvania R. Co., supra,* 154 Pa. Superior Ct. 129, 131, 35 A. 2d 603.

Judgment is affirmed."

Questions Presented

The questions involved are questions of jurisdiction:

1. Was the petitioner, a common, unskilled, backshop employee, *directly or closely and substantially* affecting the interstate or foreign commerce of appellee, or *did any part of his duties* further such interstate or foreign commerce?

2. To what extent did the Amendment of 1939 affect the original provisions of the Federal Employers' Liability Act?

3. In doubtful cases, such as the one at bar, should the jurisdiction of the State under the provisions of its Workmen's Compensation Laws be retained, or should it be surrendered in favor of a Federal Enactment?

I

Was the petitioner, a common, unskilled, backshop employee, directly or closely and substantially affecting the interstate or foreign commerce of appellee, or did any part of his duties further such interstate or foreign commerce?

The Federal Employers' Liability Act as amended, reads as follows:

> "Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of

kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purpose of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter." Apr. 22, 1908, c. 149, Sec. 1, 35 Stat. 65; Aug. 11, 1939, c. 685, Sec. 1, 53 Stat. 1404, Title 45 U. S. C. A. Sec. 51

The second paragraph of the foregoing citation constitutes the amendment of August 11, 1939.

The facts in this case are not in dispute. Appellant was employed in one of the shops of the Erie Railroad Company located in Meadville, Pennsylvania, where various heavy and light forgings and castings were manufactured. No repairs are directly made on the rolling stock of the defendant company in this particular shop. As part of the production or manufacturing shop in Meadville, a blacksmith shop is operated and it was in this shop that the accident occurred. On the day of the injury the blacksmith was engaged in forging some strap hangers. When these strap hangers had been forged they were to be forwarded to a machine shop to be finished, and then the finished product would be shipped to the Hornell Erection Shop where they were then to be stored and eventually used on locomotives. Appellant's duties were confined to the carrying of the lot metal from the furnace to the hammer die and to do other general work around the shop. He was just a common,

ordinary, unskilled workman, and could only be classified as a backshop employee having no contact whatsoever with the rolling facilities of the defendant company, or with the direct forgings of any parts to be attached to the rolling stock of the defendant company.

Under the provisions of the Federal Employers' Liability Act, prior to the amendment of 1939, as interpreted by this Honorable Court he could not be considered to be engaged in interstate commerce, and, therefore, his remedy would be under the Workmen's Compensation Laws of the State of Pennsylvania.

In *Shanks* v. *Delaware, Lackawanna & Western R. R. Co.* U. S. Reports—239 page 556, this Court in that case decided "that to recover under the Federal Employers' Liability Act, not only must the carrier be engaged in interstate commerce at the time of the injury, but also the person injured must be employed by the carrier in such commerce."

"Where a railroad company, which is engaged in both interstate and intrastate transportation, conducts a machine shop for repairing locomotives used in such transportation, an employee is not engaged in interstate commerce while taking down and putting up fixtures in such machine shop, and cannot, if injured while so doing, maintain an action under the Federal Employers' Liability Act, even though on the other occasions his employment relates to interstate commerce."

In the case of *Chicago & E. I. R. Co.* v. *Industrial Commission of Illinois, et al.*, 284 U. S. 296, this Honorable Court held that "an employee injured while oiling electric motor furnishing power for hoisting coal into chute, to be taken therefrom and used by locomotives principally employed in moving interstate freight, was not engaged in interstate commerce."

In the case of *New York, N. H. & H. R. Co.* v. *Bezue*, 284 U. S. 415, this Honorable Court again held that "unskilled roundhouse laborer injured while working on locomotive removed from service for 12 days for boiler wash and repairs was not engaged in interstate commerce."

In this particular case Mr. Justice Roberts in delivering the opinion of the Court, stated "the test thus applied is broader than our decisions justify. All work performed in railroad employment may, in a sense, be said to be necessary to the operation of the road. The business could not be conducted without repair shop employees, clerks, janitors, mechanics, and those who operate all manner of appliances not directly or intimately concerned with interstate transportation as such, or with facilities actually used therein. But we have held that the mere fact of employment does not bring such employees within the act."

To the same general effect were the decisions in the cases of *Chicago & East Ill. R. Co.* v. *Ind. Commission of Ill.*, 284 U. S. 296; *Chicago B. & Q. R. Co.* v. *Harrington*, 241 U. S. 177; *D. L. and W. R. R.* v. *Yurkonis*, 238 U. S. 439; *Chicago & N. W. Ry. Co.* v. *Bolle*, 284 U. S. 59.

II

To what extent did the Amendment of 1939 affect the original provisions of the Federal Employers' Liability Act?

It is claimant's contention that the Amendment of 1939 apparently contemplates two separate and distinct classes of railroad employees, namely:

First: those employees who, because of the nature of their duties, were regularly employed in the furtherance of the interstate commerce of their employer, but who, at the time of the accident, became temporarily divorced from

their regular duties so that at that particular time they were not engaged in the interstate operations of their employer; and,

Second: those employees whose duties constantly kept them either *directly*, or *closely* and *substantially*, in contact with the interstate commerce of their employer.

Therefore it would appear that the intent of the legislators, with reference to this first class, was to extend the benefit of the Act to those employees whose regular duties were part of the interstate operations of their employer, but who, at the time of the accident, divorced themselves from such interstate commerce because of some temporary different assignment not directly connected with their regular duties and the interstate business of the employer.

With regard to the second class, claimant contends that the legislators apparently intended to include within the benefits of the Act only such employees who were directly, or closely and substantially, affecting the interstate commerce of the employer.

As a result of such position, it would seem to logically follow that there exists an unconsidered third class which is not protected by, or affected by, the Amendment of 1939. This third class, whose members cannot be definitely ascertained, and whose membership must depend upon the facts of each individual case, apparently includes all those employees of a company engaged in interstate commerce, whose regular duties are such that they neither are employed in interstate commerce nor directly, or closely and substantially, affect the interstate commerce of the employer. Thus, there is an indistinct twilight zone in which this third group fits and in which each case must be delineated in the light cast by its own peculiar facts.

Claimant submits, therefore, that before any employee can be said to belong to the first two classes enumerated

above, it must be determined first of all whether any part of his *regular* duties did at one time or another further his employer's interstate commerce, and, at the time of the accident, he happened merely to be temporarily divorced from such regular duties; or, second, it must be determined that the employee involved was, at the time of his injury, either directly, or closely and substantially, affecting the interstate commerce of his employer.

Can it be said in our present case that the claimant, whose duties were so limited and restricted, comes within either of the above two classifications, and that he was doing such work that any part of his duties was in "furtherance of interstate or foreign commerce," or that he was directly, or closely and substantially, affecting such commerce?

It is respectfully submitted that in order to reach the conclusion that claimant comes within either of the first two classifications it would be necessary to stretch the provisions of the Act, and its Amendment, to such a point that it would include *all* railroad employees, without distinction as to the scope of their duties, for the reason that railroads generally embrace many activities assisting interstate commerce whether such railroads are directly connected with it or not. This view is similarly set forth by Mr. Justice Black in the case of *New York, N. H. & H. R. Co.* v. *Bezue* (284 U. S. 415, *supra*), wherein he said: "all work performed in railroad employment may, in a sense, be said to be necessary to the operation of the road. The business could not be conducted without repair shop employees, clerks, janitors, mechanics, and those who operate all manner of appliances not directly or intimately concerned with interstate transportation as such, or with facilities actually used therein. But we have held that the mere fact of employment does not bring such employees within the Act."

Counsel for claimant, Guido Trucco, contends that even if the Court is of the opinion that said claimant had *some* connection with interstate commerce at the time of the accident by reason of the type of work in which he was engaged, nevertheless such connection would be too remote to bring him within the intent of the legislators as set forth in the 1939 Amendment.

III

In doubtful cases, such as the one at bar, should the jurisdiction of the State under the provisions of its Workmen's Compensation Laws be retained, or should it be surrendered in favor of a Federal Enactment?

The Workmen's Compensation Act of the Commonwealth of Pennsylvania provides that "in every contract of hiring made after December 31, 1915 and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of Article 3 of this Act and have agreed to be bound thereby," etc. (Act of June 2, 1915, P. L. 739 as amended June 21, 1939).

Article 3 defines the term "injury" and "personal injury" and further provides "that it shall include all injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employee, who, though not so engaged is injured by the premises occupied by or under the control of the employer or upon the employer's business or affairs are being carried on and the employee's presence thereon being required by the nature of his employment."

Under the provisions of this Act, claimant was awarded compensation by the Referee, which award was sustained by the Board. The question now is whether or not the jurisdiction of the State Workmen's Compensation Law should be surrendered in favor of the Federal Enactment. Both Acts were passed for the "benefit" of the employee and it was intended that the employee would obtain redress for his injury in either one of those two courts. At no time was it intended to deprive an injured employee of compensation because of the conflict of interpretations of those laws which were passed for the specific purpose of protecting him. We respectfully submit that in this particular case the jurisdiction of State Courts and tribunals should be surrendered only where lack of jurisdiction is shown to exist and that any doubt should be resolved in favor of petitioner's necessity to obtain compensation for his injuries. Unless petitioner is given the benefit of such doubt he will be left without any relief whatsoever either under State or Federal Statutes. Such a situation would be directly contrary to the specific intent of the legislators both in Pennsylvania and in the Congress of the United States, whose principal thought was to confer the benefit of such legislation to each employee so that he could receive some redress for his injury, either in the State Courts or Federal Courts.

We have been very much impressed by the decision of this Honorable Court in the case of "Davis v. Department of Labor and Industries of Washington," decided December 14, 1942, which appears in 63 Supreme Court Reporter, page 225 (317 U. S. 249).

While this case involves the construction and application of the Federal Longshoremen's and Harbor Workers' Compensation Act and amendments, yet the reasoning and logic of the opinion seems applicable to our present litiga-

tion. Mr. Justice Black, in delivering the majority opinion of the Court, stated "there is, in the light of the cases referred to, clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements. That zone includes persons such as the decedent who are, as a matter of actual administration, in fact protected under the State Compensation Act."

Referring to the Jensen decision (*Southern Pacific* v. *Jensen*, 244 U. S. 205), Mr. Justice Black mentioned the Act of Congress passed on October 6, 1917, and the other efforts of Congress to protect employees so that their rights and remedies would be covered under the Workmen's Compensation Law of any State. Apparently Congress was always anxious to permit State Compensation protection whenever possible by making the Federal law applicable only "if recovery for the disability or death through Workmen's Compensation proceedings may not validly be provided by State law." Further on (on page 230) Mr. Justice Black stated, "the benefit of a presumption is also given in cases of conflict of state or state and territorial workmen's compensation acts under the Full Faith and Credit clause, Const. art. 4, paragraph 1. There, as here, the issue is a factual one arising from a clash of interest of two jurisdictions. In such a case involving the question of whether the California or the Alaska Workmen's Compensation Act should apply to a resident of California injured in Alaska who brought suit in California, this Court has said 'the enactment of the present statute of California was within State power and infringes no constitutional provision. *Prima facie*, every state is entitled to enforce in its own courts its own statutes, lawfully enacted.'"

Mr. Justice Frankfurter in concurring with Mr. Justice Black, in his opinion that, "Any legislative scheme that

compensates workmen or their families for industrial mishaps should be capable of simple and dependable enforcement." He goes on to add: "Such a desirable end cannot now be achieved merely by judicial repudiation of the Jensen doctrine. Too much has happened in the twenty-five years since that ill-starred decision. Federal and state enactments have so accommodated themselves to the complexity and confusion introduced by the Jensen rulings that the resources of adjudication can no longer bring relief from the difficulties which the judicial process itself brought into being. Therefore, until Congress sees fit to attempt another comprehensive solution of the problem, this Court can do no more than bring some order out of the remaining judicial chaos as marginal situations come before us."

These comprehensive statements are precisely the position now taken by Petitioner herein.

Reasons for Allowance of Writ

The question decided by the Supreme Court of the Commonwealth of Pennsylvania involves the interpretation of the Federal Employers Liability Act as amended by the Act of Congress of August 11, 1939, which question has not heretofore been determined by this Honorable Court. In addition thereto, it is the humble opinion of counsel for the petitioner that the Supreme Court of the State of Pennsylvania has decided the question in a way probably not in accord with applicable decision of this Honorable Court.

Conclusion

We respectfully submit that this is a case eminently proper for this Honorable Court to review.

Wherefore your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the

State of Pennsylvania, commanding that Court to certify and to send to this Court for its review a full and complete transcript of the record and all proceedings in said suit, being the case numbered and entitled in its docket as "Guido Trucco, Appellant, v. Erie Railroad Company, Appellee, 219 January Term, 1945", and that the judgment of said Court be reviewed by this Court, and for such other relief as to this Court may seem proper.

GUIDO TRUCCO,
Petitioner;
EDWARD E. PETRILLO,
Counsel for Petitioner.

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